University of Toronto LAW JOURNAL

Volume XXVI 1976 University of Toronto Press

EDITOR Professor R.C.B. Risk

BOOK REVIEW EDITOR Professor Ernest J. Weinrib

EDITORIAL BOARD

Professor A.S. Abel
Professor I.F.G. Baxter
Professor J.Ll.J. Edwards
Dean M.L. Friedland
Rt Hon. Bora Laskin PC Chief Justice of Canada
Professor D.J. Sherbaniuk

ADVISORY COMMITTEE

Professor F.A. Allen *University of Michigan*
Dr Philip Anisman *Ottawa*
Professor Charles B. Bourne *University of British Columbia*
Professor A.W. Bradley *University of Edinburgh*
Professor L. Neville Brown *University of Birmingham*
Professor W.H. Charles *Dalhousie University*
Mr Bradley Crawford *Toronto*
Professor R.D. Gibson *University of Manitoba*
Professor Moffat Hancock *Stanford University*
Professor Stewart Macaulay *University of Wisconsin*
Professor J.F. Northey *University of Auckland*
Professor Geoffrey Sawer *Australian National University*
Dean D.A. Soberman *Queen's University*
M. le doyen Pierre Verge *Université Laval*
Professor Louis Waller *Monash University*
Mr Paul Weiler *Vancouver, British Columbia*
Mr David Williams *Emmanuel College, Cambridge*

University of Toronto LAW JOURNAL

volume XXVI 1976

CONTENTS

ARTICLES

Conscience in the English common law tradition — LOUIS A. KNAFLA — 1

Penal psychiatry in Canada: The method of our madness — RICHARD V. ERICSON — 17

Illegality as a tort defence — ERNEST J. WEINRIB — 28

Cruel and unusual? Capital punishment in Canada — B. WELLING / L.A. HIPFNER — 55

Interprovincial, the constitution, and the conflict of laws — MICHAEL TERRY HERTZ — 84

Watergate and the constitution of the United States — ARCHIBALD COX — 125

The juvenile court movement — GRAHAM PARKER — 140

Indefeasibility of title in the Canadian context — MARCIA NEAVE — 173

The administrative tribunal: A view from the inside — PAUL C. WEILER — 193

Economics, morality, and the law of torts — JOSEPH M. STEINER — 227

The juvenile court movement: The Illinois experience — GRAHAM PARKER — 253

The golden age: The law about the market in nineteenth-century Ontario — R.C.B. RISK — 307

The doctrine of inequality of bargaining powers: Post-Benthamite economics in the House of Lords — M.J. TREBILCOCK — 359

Proof of facts in constitutional cases — P.W. HOGG — 386

The anti-inflation judgment: Right answer to the wrong question? — ALBERT S. ABEL — 409

A res ipsa loquitur nutshell — STANLEY SCHIFF — 451

REVIEWS OF BOOKS

NELSON *Americanization of the Common Law: The Impact of Legal Change in Massachusetts Society 1760–1830* DAVID H. FLAHERTY 108

WADDAMS *Product Liability* P.S. ATIYAH 118

DUSSAULT *Traité de droit administratif canadien et québécois* ALBERT S. ABEL 121

ROSS *On Guilt, Responsibility and Punishment* GERALD H. GORDON 215

PRANG *N.W. Rowell: Ontario Nationalist* KENNETH MCNAUGHT 224

FRIED *Medical Experimentation: Personal Integrity and Social Policy* ERNEST J. WEINRIB 347

WILKINS *Legal Aid in the Criminal Courts* L.B. FOX 356

SARTORIUS *Individual Conduct and Social Norms: A Utilitarian Account of Social Union and the Rule of Law* LEON W. ELLSWORTH / MICHAEL E. FELD 466

AIRD, ZIMMERMAN & BERLIS

BARRISTERS & SOLICITORS

15th Floor, York Centre, 145 King Street West, Toronto, Canada M5H 2J3

Hon. John B. Aird, Q.C.
J. David S. Bohme, Q.C.
H. E. Zimmerman, Q.C.
Graham D. Worley, Q.C.
R. Stephen Paddon, Q.C.
Miriam A. Kelly
Robert N. Granger
James D. Sharples
J. P. Dawson
Patricia R. German
T. E. R. Butcher
John J. Pizale
Albert J. Milstein
Edmund Smith
Garry W. Dawson
Donald L. West

Douglas A. Berlis, Q.C.
Richard J. Zimmerman, Q.C.
Carl T. Grant, Q.C.
Bernard M. Kelly, Q.C.
J. Paul Terry
G. S. Bennett
Harold R. Berry
W. S. Vaughan
Ralph D. Dalgarno
Geoffrey D. F. Skerrett
Eric L. Versteeg
Peter Y. Atkinson
Timothy C. Kelly
William G. VanderBurgh
Robert J. Howe

Counsel

John G. Edison, Q.C. William H. Zimmerman, Q.C.

Area Code 416 *Telephone* 364–1241
Cable Address "MAXIMS" *Telex* 06–22702